BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

WISEBURN UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025030652

ORDER GRANTING MOTION FOR STAY PUT

MARCH 24, 2025

On March 14, 2025, Parent, on behalf of Student, filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Wiseburn Unified School District as respondent.

Student also filed a motion for stay put on March 14, 2025, seeking an order allowing him to continue to attend Wiseburn Middle School as, he contends, he had been pursuant to his most recently consented to and implemented Individualized Educational Program or IEP. On March 19, 2025, Wiseburn filed an opposition to the stay put motion stating that Student had been placed in independent study and the independent study program was his most current placement.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the last agreed upon and implemented individualized educational program, called IEP, placement prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs. tit. 5, § 3042, subd. (a).)

Here, based on the moving and responsive papers, the parties agree to the sequence of consented to IEPs, and Student's placements from January to the filing on this complaint. Both sides agree that Parents consented to Student's May 4, 2023, IEP as amended on September 29, 2023, and January 7, 2023. Student's May 4, 2023, IEP was developed by his former school, DaVinci Connect Homeschool.

Student's September 29, 2023, IEP team meeting was scheduled to discuss a thirty-day review IEP for Student after his entrance into Wiseburn Middle School at the beginning of the 2023-2024 school year. Student, who is autistic, struggles with behavior issues and social interaction deficits. The September 29, 2023, IEP amendment placed Student is Wiseburn Middle School's general education program. His IEP included a full-time behavior aide, behavior intervention development supervision, individual and group counseling, parent counseling, and specialized academic

instruction consultation. The IEP included a behavior intervention plan. Parents consented to the September 29, 2023, IEP on October 3, 2023.

On January 16, 2025, the parties entered into a settlement agreement of a previously filed request for due process hearing. Neither side provided a complete copy of the settlement agreement. The documents provided established that one element of the settlement agreement was Parent's consent to the January 7, 2025, IEP amendment. Parents provided consent to the January 7, 2025, amendment on January 16, 2025.

The January 7, 2025, IEP amendment provided for placement in a nonpublic school. However, the January 7, 2025, IEP amendment was implemented at Wiseburn Middle School while the parties worked towards finding an appropriate nonpublic school. Both sides stated in their papers that Student attended Wiseburn Middle School, pending placement in a nonpublic school, until March 12, 2025.

Student has not attended a nonpublic school at any time since beginning at Wiseburn Middle School. According to Wiseburn, Student's behavior escalated between January and March of 2025. This resulted in Wiseburn's March 11, 2025, notification to Parents that Student would be placed in its independent study program pending enrollment in an agreed upon nonpublic school. Wiseburn offered no evidence that the placement was an interim alternative educational setting. The complaint in this case followed.

Wiseburn argues the parties' agreement that nonpublic school placement is appropriate for Student means the parties have agreed Student can be placed in something other than his "current educational placement" during stay put. Wiseburn further contends that "changed circumstances" allows that placement to be independent study. Wiseburn cites no authority on point, for its arguments.

The IDEA provisions referencing district and parental agreement to a different educational placement during stay put refers to an agreement regarding the stay put placement specifically. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a).) The OAH case Wiseburn cited regarding "changed circumstances," ordered a different stay put placement than the last agreed and implemented IEP, because the residential treatment facility terminated a 22-year-old student's services due to differing end dates for services at age 22 in the state where the residential facility was located. (Order Granting Motion for Stay Put, OAH Case No. 2021030159 (March 10, 2021).) In other words, the last implemented placement was no longer available. As the order stated, it was analogous to a school closure. The facts of this case are not similar.

"The purpose of the stay put provision is to strip schools of the unilateral authority they had traditionally employed to exclude disabled students ... from school" (*Johnson ex rel. Johnson v. Special Educ. Hearing Office, State of Cal*. (9th Cir. 2002) 287 F. 3d. 1176, 1181.) Here, Student and Wiseburn's motion papers established that the last consented and implemented IEP, the May 4, 2023, IEP, as amended on September 23, 2023, and January 7, 2025, provided for continued placement in the comprehensive middle school, pending non-public school enrollment.

Student's final, appropriate placement is not being decided via this motion. The merits of issues in a due process hearing request should not be prematurely decided through the preliminary vehicle of a stay put request. (*E.M.C. v. Ventura Unified School District* (C.D. Cal. 2020) 2020 WL 7094071, citing, *N.D. ex rel. parents acting as guardians ad litem v. Hawaii Dept. of Educ*. (9th Cir. 2010) 600 F. 3d 1104, 1114.) The sole issue here is whether Student is entitled to Stay Put, and a determination of the last agreed to and implemented IEP placement.

Student has met his burden of establishing he is entitled to stay put and that the last agreed to and implemented IEP was the May 4, 2023, IEP as amended on September 29, 2023, and January 7, 2025.

ORDER

1. Student's Motion for Stay Put is granted.
2. Stay Put is the continuation of Student's May 4, 2023, IEP as amended on September 29, 2023, and January 7, 2025, specifically:
    a. Placement in general education classroom at Wiseburn Middle School, pending enrollment in a mutually agreeable nonpublic school or resolution of the underlying request for due process hearing, whichever comes first;
    b. 1,890 minutes per week of specialized academic instruction;
    c. 1,890 minutes per week of one-to-one behavior intervention aide services;
    d. 360 minutes per month of behavior intervention development services; 30 minutes per week of group counseling services, and 60 minutes per week of individual counseling services; and
    e. 600 minutes per year of parent counseling services.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge, Office of Administrative Hearings